

When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.445. (This is a GIL).

January 6, 2003

Dear Xxxxx:

This letter is in response to your letter of September 27, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Following up from your letter dated September 5, 2002 (attached). Reading through your notes pertaining to section 130.445 when the federal taxes fall upon the buyer. This is where my question comes in. I agree with you on the federal excise tax for gasoline and diesel fuel fall upon the manufacturers, wholesalers or importers but the federal excise tax on jet fuel doesn't fall upon the manufacturer, wholesaler or importer who is registered with the IRS under section 4101 as a producer of aviation fuel. AAA is registered under section 4101 as a producer of aviation fuel. This allows AAA to be exempt of the excise tax on jet fuel. Under the federal excise statutes that are controlling for transactions of this nature AAA is considered a producer of aviation fuel. Thus the federal excise tax is imposed on sales made by AAA; however these sales are to a consumer (who doesn't retail it) and such, are sales at retail (IRC secs. 4091(a), 4093(b)(1), et seq.)

Therefore, its AAA's opinion that the federal excise should not be part of the selling price to compute the IL sales tax because the federal tax is not imposed on AAA up stream of the purchase from AAAs supplier(s). The federal tax on jet fuel attaches the moment the sale is made to the end user 'sale at retail'(IL section 150.201(d)) at that point AAA pays the tax directly to the federal government. This is clearly stated in IL section 130.445 (a)(1); I would also like to point your attention to section 130.2060(b) Retail sales of motor fuel in regards to the IL motor fuel tax that is not part of the selling price because its on the consumer. This theory not only applies to jet fuel sold at retail but it also should apply to the IL environmental fee and IL underground storage tank fee. These two taxes also apply at the point of sale since AAA collects and remits these to the state directly. i.e. we do not pay our suppliers in advance when we purchase the fuel.

If you could please respond to both the federal tax issue and the state taxes it would be most appreciated.

We are unable to agree with your conclusions without further information. As we understand it, the federal tax to which you refer is imposed at the producer level and is a valid element of the cost of the aviation fuel at the time at which you make a purchase of fuel. Therefore, you are properly charged state sales tax on the total price of the fuel which includes the amount of the federal tax. The fact that as a result of your status under Section 4104 you are later able to obtain a refund of the federal tax does not change the fact that the state tax was properly imposed. You may not subtract the amount of the federal tax from the price of the fuel on which you pay tax, nor may you later obtain a refund from Illinois for the amount of state sales tax paid on the amount of the federal tax for which you have obtained a refund.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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